

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

(11) C.P.(I.B)-1632/9/(MB)/2017
MA 520/2018 & MA 510/2018
MA 662/2018

CORAM: Present : SHRI M.K. SHRAWAT
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 07.09.2018

NAME OF THE PARTIES: M/s. HGS India Ltd.
V/s
M/s. Geo API Solutions Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 9 of INSOLVENCY AND BANKRUPTCY
CODE, 2016.

ORDER

1. The Learned Representatives of both the sides are present.
2. **Order under Section 12A.** An Order under section 9 of IBC was passed on 23.04.2018 in CP No. 1632/IBC/2017 titled as M/s. HGS India Limited V. M/s. Geo API Solutions Private Limited where upon moratorium was declared and IRP was appointed. Immediately thereafter it was informed that a sum of Rs.2.79 crores have been paid, as recorded vide an Order sheet dated 21.06.2018.
3. Simultaneously the Corporate Debtor through a Director moved a MA 520/2018 on 11.06.2018 with a prayer that upon payment of outstanding debt amount the Operational creditor is willing to withdraw the Petition. In the said MA Application the managing Director as a Applicant of the Corporate Debtor has informed as under:-

*"4.I say that in pursuance of the settlement proposal and the agreed payment schedule, admittedly, the Corporate Debtor has made a part payment of INR 10,00,000/- in the first week of April, 2018 and INR 70,00,000/- on 17th April, 2018 to the Operational Creditor. I say that by 17th April, 2018, an amount of INR 80,00,000/- (INR Eighty Lakhs Only) was duly paid towards the part payment of the outstanding amount. I say that the balance outstanding amount was to paid by end of June, 2018 as per the agreed payment schedule. Copy of e-mail dated 17th April, 2018 alongwith payment receipt for an amount of INR 70,00,000/- and e-mail of the Operational Creditor confirming the said payment is hereto annexed and marked as **Exhibit:"C"**.*

5. It is pertinent to note that despite having knowledge of the said Order being passed, the Operational Creditor with

*malafide intention addressed an e-mail dated 10th May, 2018 to the Corporate Debtor and demanded the balance payment. The Corporate Debtor being unaware of the said Order replied to the said e-mail and stated that they are committed to make the payment as agreed in the payment schedule. Copy of e-mail dated 10th May, 2018 addressed by one Mr. Anil Dass to the Corporate Debtor and the reply of the Corporate Debtor is hereto annexed and marked as **Exhibit: "D".***

4. The Corporate Debtor has informed that the impugned Insolvency Order was obtained Ex-Parte qua the Corporate Debtor as a consequence the Insolvency proceedings were brought to his notice only on 08.06.2018 when the appointed IRP visited the Office informing the commencement of the Insolvency process. It is emphasized that the payments have been made and the proposal of the settlement was under consideration among the parties well before the Insolvency Order was passed. In the said MA the Corporate Debtor has given an undertaking for payment of the Balance amount as per the following terms.:-

*"I say that as per the present Petition, the Operation Creditor has claimed an amount of INR 2,79,61,436/- which includes principal outstanding of INR 2,71,33,854/- alongwith interest of INR 8,27,582/- @ 18% p.a from 1.9.2017 till 1.11.2017. I say that an amount of INR 80,00,000/- is admittedly paid to the Operational Creditor by the Corporate Debtor which leaves the balance outstanding of INR 1,99,61,436/-(hereinafter referred to as **"the Outstanding Amount"**). I say that, without prejudice to whatever is stated herein and rights and contentions of the Corporate Debtor is ready and willing to pay the Outstanding Amount to the Operational Creditor as per the settlement proposal and payment schedule agreed between the parties."*

5. The IRP was appointed has also clarified that no claim have been received hence the COC could not be constituted. Vide an Order of 26.06.2018 this Bench has recorded the submission of Learned IRP in the following manner.:-

"2. The two Misc. Applications, one from the side of the Resolution Professional M.A. No. 510/2018 and another Application M.A. No. 520/2018 by the Corporate Debtor are submitted. In respect of MA 510 of 2018 in para 8 at Page 5 it is stated as under :-

"(8) I submit that as on the last date of receipt of Claim i.e. on 21st June' 2018, I have not received any Claim from any Financial Creditors so that I can form "Committee of Creditors" and also I have not received any Claim from any of the Operational Creditors which can be accepted. Hence as on date no "Committee of Creditors" can be formed as mandated under said Code and the relevant IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016."

3. *In a situation when on commencement of the Insolvency Proceedings, no Committee of Creditors has yet been formed and that the Corporate Debtor is willing to settle the disputed amount, for which, the Operational Creditor has agreed, this Bench is of the view that the Petition for Insolvency can be disposed of as settled.*
4. *In this regard the proposal from the side of the Corporate Debtor is considered wherein it is stated that a sum of Rupees Eighty Lakhs has already been paid and for the balance amount parties have agreed to settle for a sum of Rupees 2.05 Crores duly agreed upon and noted in the Order Sheet. The prayer is that on de-freezing of the Bank account the said amount shall be paid as up-front payment.*
5. *As a consequence, the Resolution Professional is directed to intimate the Bank Authorities to de-freeze the Bank account of the Corporate Debtor so that the amount as agreed upon can be paid immediately.*
6. *The Learned Resolution Professional is present. He states that the Insolvency cost and his fees have already been settled with a prayer that he may be recused from further proceedings. He is recused and not to take further action against the Debtor Company by de-freezing the account. Hereby directed to return all the documents taken over in his possession.*
7. *On payment the matter can be mentioned for final disposal of the Petition.*
8. *The matter is adjourned to **11.07.2018**."*

6. Thereafter on receiving professional fees and cost of CIRP the Learned Resolution professional has recused himself from Insolvency Proceedings.

7. When the matter is called the Petitioner has placed on record a Memorandum of Withdrawal wherein expressed his willingness to withdraw the impugned Petition as well as the insolvency Proceedings as under:-

"It is submitted on behalf of the Operational Creditor that the parties have settled the dispute inter se and that the Operational Creditor has received a sum of Rs. 2.05 Crores on behalf of the Corporate Debtor in light of the terms of settlement agreed by and between the parties.

In light of the settlement, the Operational Creditor does not intend to pursue the matter any further and hence, the Operational Creditor intends to withdraw the captioned Petition filed u/s. 9 of the Insolvency and Bankruptcy Code, 2016.

In view of the aforesaid premise, the Operational Creditor hereby withdraws the captioned Petition unconditionally."

8. On account of Section 12A introduced on 06.06.2018 adjudicating authorities can allow Withdrawal of an Application under section 9 if approved by 90% voting of the COC. In this case the IRP has made

a declaration that COC was not constituted and EOI was not invited therefore Withdrawal can be permitted by invoking the jurisdiction as prescribed under section 12A of the IBC. Under the totality of the facts and circumstances it is fit case to allow the Withdrawal of Petition under section 12A of the Insolvency Code by discharging the IRP from all the duties under the Insolvency Code and the case filed be consigned to Records.

SD/-
M.K. SHRAWAT
Member (Judicial)

07.09.2018.

HHS